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January 12, 2016

Via ECF

Hon. Barbara Moses
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 1640
New York, New York 10007

**Re: Thomas Baba et al. v. Beverly Hills Cemetery Corporation, Inc. et al.
S.D.N.Y. 15 CV 05151 (CM)**

Dear Judge Moses:

This firm represents Defendant, Beverly Hills Cemetery Corporation Inc. (“Beverly Hills”) in the above-referenced matter. In accordance with Your Honor’s January 12, 2016 Order, this letter sets forth Defendant’s position regarding the parties’ discovery dispute involving putative class information.

The Court granted conditional certification of a collective action under Section 216(b) of the Fair Labor Standards Act (“FLSA”) for all individuals who are or were employed as Family Service Counselors and/or Advanced Planning Counselors by Defendant since July 1, 2012 (“Covered Employees”). After the Court granted conditional certification, on December 1, 2015, Plaintiff’s counsel transmitted a Court-approved Notice of Pendency of Lawsuit Regarding Wages. To date, only one individual, John Kobeck has opted in to the action. Notably, Plaintiff has not yet moved for class certification under Federal Rule of Civil Procedure 23.

Despite the fact that only one individual has opted in to the action and Plaintiff has not yet moved for class certification under Rule 23, Plaintiff has sought to discover documents and information pertaining to the individual members of the putative class. These discovery requests

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seek personnel and payroll records which pertain to the merits of the case rather than the appropriateness of certification. Courts in this circuit routinely deny such requests for Rule 23 precertification discovery about individual potential class members. Da Silva Moore v. Publicis Groupe, 868 F. Supp. 2d 137, 169 (S.D.N.Y. 2012) (“[plaintiffs] are only entitled to discovery related to either the named plaintiffs or to company policies to support a motion (not yet filed, much less granted) for class certification; plaintiffs are not entitled to discovery about individual potential class members until plaintiffs have moved for and been granted class certification”); Charles v. Nationwide Mut. Ins. Co., Inc., 2010 WL 7132173 (E.D.N.Y. May 27, 2010) (refusing to compel production of time records of potential class members before class is certified); Dziennik v. Sealift, Inc., 2006 WL 1455464, at *1 (E.D.N.Y. May 23, 2006).

Consistent with this precedent, Defendant has only produced responsive information and documents pertaining to the named Plaintiff, Thomas Baba, and the lone opt-in, John Kobeck, and it has agreed to provide such information and documents for any additional individuals who opt in to the action. Defendant also remains willing to respond to discovery requests tailored to seek information that relate to the appropriateness of certification.

We thank Your Honor for your consideration.

Respectfully submitted,

/s/ RMT

Robert M. Tucker

cc: C.K. Lee, Esq.